



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
[REDACTED]
MGE/170914

PRELIMINARY RECITALS

Pursuant to a petition filed December 18, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on March 22, 2016, at Racine, Wisconsin.

The issue for determination is whether Petitioner's community spouse's income allocation (CSIA) may be increased (thus reducing Petitioner's patient liability).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner applied for institutional Medicaid in October 2015. That application was approved and the agency determined that the maximum community spouse income allocation was \$2980.50. After health insurance premiums, Petitioner's patient liability was determined to be is \$1481.92.

3. Petitioner has a community spouse and filed this appeal seeking an increase in the community spouse income allocation (CSIA).
4. Petitioner's gross income is \$3516.71 and consists of Social Security benefits of \$1579.00 (after \$104.90 Part A and B deduction), a pension of \$1226.40, an IRA distribution of \$16.16 and a health savings account payout of \$695.15. (Per agency Exhibit # 6)
5. Petitioner's community spouse has total income of \$1532.28 and that consists of Social Security of \$826.20 (after \$104.90 Part A and B deduction), a pension of \$614.28 and other income of \$91.80. (Per Petitioner submission dated February 10, 2016 and agency Exhibit # 6).
6. Total income for Petitioner and spouse is \$5048.99.
7. Petitioner's community spouse's monthly expenses are estimated to total \$4554.47 and that list of monthly bills is detailed in the Exhibits so is not retyped here. An income tax liability for 2015 was submitted post hearing and was \$503.00 or \$42.00 per month. Additionally, \$853.31 or \$71.11 per month was withheld from pensions. This brings total expenses to bring the total to \$4667.58.
8. Included in the list of expenses are a cell phone bill for both Petitioner (\$47.61) and community spouse (\$72.11); a Time-Warner bill of \$68.70 and pet supplies of \$50.00.

DISCUSSION

Medical assistance rules require institutionalized persons to "apply their available income toward the cost of their care." *Wis. Admin. Code § DHS 103.07(1)(d)*. However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of an institutionalized person so that she does not fall into poverty. *See Wis. Stat. § 49.455 and 42 U.S.C. § 13964-5*; also see *Medicaid Eligibility Manual (MEH)*, §18.1. An institutionalized person may allocate some of his/her income to the community spouse. *MEH*, §18.6.1. The minimum monthly maintenance needs allowance (MMMNA) currently is \$2,655.00 plus excess shelter costs to a maximum of \$2980.50. *Medical Eligibility Handbook (MEH)*, § 18.6.2. Excess shelter costs are shelter costs above \$795.50, *Id.*, and these consist of:

Community spouse shelter costs include the community spouse's expenses for:

- i. Rent.
- ii. Mortgage principal and interest.
- iii. Taxes and insurance for principal place of residence. This includes renters insurance.
- iv. Any required maintenance fee if the community spouse lives in a condominium or cooperative.
- v. The standard utility allowance established under the FoodShare program:

If <u>Community Spouse</u> pays:	Add
Heat and utilities	See <u>8.1.3</u> of the FoodShare Handbook for the standard utility allowances.
Utilities only	" "
Telephone only	" "
If the community spouse lives in a condominium or cooperative where the maintenance fee includes utility expenses, reduce the standard utility allowance by the amount of utility expenses included in the maintenance fee.	

Id.

Administrative law judges (ALJs) have the authority to increase the CSIA above the MMMNA where the MMMNA is insufficient to meet a particular community spouse's *basic* maintenance needs. *Wis. Stat. §49.455(8)(c)*; *Wis. Admin. Code §DHS 103.075(8)(c)*; *Medicaid Eligibility Handbook (MEH)*, § 18.6. However, an increase in the CSIA above the MMMNA can be made through the fair hearing process only if it is established that the community spouse requires income above the level provided by the MMMNA due to the existence of "exceptional circumstances resulting in financial duress" for the community spouse. *Wis.*

Stat. §49.455(8) (c). Further, “ ... exceptional circumstances resulting in financial duress” means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs”. *Wis. Admin. Code §DHS 103.075(8)(c).*

Finally, here the application for institutional Medicaid was filed in October 2015. The Division of Hearings and Appeals has approved backdating in the past citing general Medicaid eligibility statutory reference.

Thus the standard to be applied by the Division of Hearings and Appeals in making a determination as to whether the CSIA may be increased is whether leaving the CSIA at the standard limit will result in financial distress for the community spouse such that the community spouse is unable to meet necessary and basic maintenance needs.

The first determination is to establish the minimum monthly maintenance needs allowance (MMMNA). Without any adjustments by the Division of Hearings and Appeals, it is \$2655.00 but can increase \$2980.50 with shelter expenses in excess of \$796.50. *See MEH, §18.6.2.*

To determine whether Petitioner’s community spouse expenses represent necessary and basic maintenance needs, I have reviewed the expenses noted in the Exhibits and referred to at Finding #s 7 and 8. I am making some adjustments. I am not approving the cell phone bills of \$119.72, the cable bill of \$68.70 or the pet expenses of \$50.00 per month; these total \$238.42. I am, however, adding a \$30.00 phone allowance for each spouse for a total of \$60.00 (the phone standard used in another public benefit program, the FoodShare program). Thus the net reduction in expenses is \$178.42. This makes allowable expenses \$4489.16 (\$4667.58-178.42). To bring Petitioner’s community spouse income to this amount \$2956.88 of Petitioner’s income must be allocated to her. This leaves his income at \$559.83. I am approving this backdated to the October 2015 application. Though the logistics may be a bit cumbersome, the backdated CSIA reduces the patient liability amount which should result in additional Medicaid payments to the facility which should then result in a refund to Petitioner’s community spouse by the facility.

CONCLUSIONS OF LAW

That the evidence does demonstrate that Petitioner’s community spouse is eligible for an increase in the community spouse income allowance to \$4489.16 effective with the October 2015 application.

NOW, THEREFORE, it is ORDERED

That the matter be remanded to the county agency with instructions to increase the community spouse income allowance to \$4489.16 as of the October 2015 institutional Medicaid application. The county agency must take these steps within 10 days of the date of his Order.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of May, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 6, 2016.

Racine County Department of Human Services
Division of Health Care Access and Accountability